

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED 09/10/09
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 10 2009 ★

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HOWARD L. WIEDER,

Plaintiff,

-against-

BROOKLYN OFFICE
09-3014
Civil Action No.:

THE CITY OF NEW YORK and NEW YORK CITY
POLICE DEPARTMENT, POLICE OFFICER JOSE
RAMOS #1, POLICE OFFICER "JANE" ROSARIO
#2 (first names presently unknown), NEW YORK
CITY POLICE OFFICER "JOHN DOE #3," NEW
YORK CITY POLICE OFFICER "JOHN DOE #4,"
NEW YORK CITY POLICE OFFICER "JOHN DOE
#5," NEW YORK CITY POLICE OFFICER "JOHN
DOE #6," NEW YORK CITY POLICE OFFICER
"JOHN DOE #7," NEW YORK CITY POLICE
OFFICER "JOHN DOE #8," NEW YORK CITY
POLICE OFFICER "JOHN DOE #9," NEW YORK
CITY POLICE OFFICER "JOHN DOE #10," ("3"
through "10" a fictitious name intended for the names
of the New York City Police Department Police
Officers whose names are presently unknown), HOME
DEPOT U.S.A., INC., JOHN MARRUGO, ROSARIO
BERG, and JOSE BERG,

NOTICE OF REMOVAL

AMON, J.

POHORELSKY, M.J.

Defendants.
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To The Honorable Judges of The United States District Court for The Eastern District of
New York:

Removing party, Home Depot U.S.A., Inc. ("Home Depot"), by its attorneys,
D'Amato & Lynch, LLP, respectfully shows this Court:

1. Home Depot is a defendant in the above-entitled action.
2. On or about August 5, 2009, the above-entitled action was commenced
against Home Depot by the filing of a Summons and Verified Complaint in the Supreme

Court of the State of New York, County of Queens, under Index No. 20949-09, and is now pending therein.

3. On or about August 11, 2009, Home Depot was served with a Summons and Verified Complaint through the Secretary of State of the State of New York in the above-entitled action. A copy of said Summons and Verified Complaint is annexed hereto as Exhibit "A"

4. Home Depot has not yet served its answer to the Verified Complaint.

5. No further proceedings have been held herein in the Supreme Court of the State of New York, County of Queens.

6. Plaintiff, a resident of the State of New York, seeks recovery in this civil action for damages allegedly sustained as a result of defendants' violation of plaintiff's civil rights, namely, false and unlawful arrest without probable cause; malicious prosecution; assault and battery; and damage to his reputation in the legal community. Plaintiff's alleged injuries arose out of an altercation that took place while plaintiff was at the Home Depot store located at 131-35 Avery Avenue, Flushing, New York on August 12, 2008.

7. Home Depot is a corporation duly organized and existing pursuant to the laws of the State of Delaware, having its principal office in the State of Georgia.

8. Plaintiff further alleges that Home Depot was negligent in the training, hiring and supervision of its employees and the maintenance of the Store, thereby allowing plaintiff to be the victim of assault and battery by co-defendants.

9. This Court has original jurisdiction of the above-entitled action pursuant to 28 U.S.C. §1331, as plaintiff claims that his rights under the 4th and 14th

Amendments of the United States Constitution, 42 U.S.C. §§§ 1981, 1983 and 1985 were violated, and the action may therefore be removed to this Court pursuant to 28 U.S.C. §1441(b).

10. This notice is timely filed pursuant to 28 U.S.C. §1446.

11. Upon information and belief, not all defendants have been served in the action currently pending in the Supreme Court of the State of New York, County of Queens, including defendant John Marrugo, as associate of Home Depot.

12. Our office has discussed the removal of this matter with Corporation Counsel, counsel for co-defendant The City of New York. Corporation Counsel does not object to the removal of this action from the Supreme Court of the State of New York, County of Queens to this Court.

13. Our office has also diligently attempted to obtain the consent of the remaining co-defendants for the removal of this action, including making numerous telephone calls to Corporation Counsel and the Legal Division of the New York City Police Department in an attempt to obtain their consent for removal. However, upon information and belief, not all co-defendants have been served, and, in the case of the City and Police defendants, Corporation Counsel, has advised that their representation has not yet been determined. Therefore, obtaining the consent of the remaining defendants was not feasible.

WHEREFORE, removing party Home Depot U.S.A., Inc. prays that the above-entitled action be removed from the Supreme Court of the State of New York, County of Queens to this Court.

Dated: New York, New York
September 10, 2009

D'AMATO & LYNCH, LLP

By:


RACHEL NUDEL

Attorneys for Defendant
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Our File No.: 434-76044